

The appellant, Ricky Butler, filed a petition to rehear in accordance with Rule 39 of the Tennessee Rules of Appellate Procedure on June 29, 2006, following the release of the opinion of this Court on June 27, 2006. The opinion of this Court dismissed the petitioner's appeal because the appellant's notice of appeal was filed outside the thirty day time limit.

The grant or denial of a petition to rehear remains solely in the discretion of this Court. However, Rule 39 of the Tennessee Rules of Appellate Procedure provides guidance as to the "character of reasons that will be considered" by the Court in making its determination. Such circumstances include the following: (1) the court's opinion incorrectly states the material facts established by the evidence and set forth in the record; (2) the court's opinion is in conflict with a statute, prior decision, or other principle of law; (3) the court's opinion overlooks or misapprehends a material fact or proposition of law; and (4) the court's opinion relies upon matters of fact or law upon which the parties have not been heard and that are open to reasonable dispute. See Tenn. R. App. P. 39(a); see also Advisory Comm'n Comments, Tenn. R. App. P. 39. A petition to rehear is intended to call attention of the Court to matters overlooked, not things which counsel supposes were improperly decided after full consideration. Clover Bottom Hosp. & Sch. v. Townsend, 513 S.W.2d 505, 508 (Tenn. 1974). Further, a petition for rehearing which merely reargues the appellant's original position will not be granted. New Jersey Zinc Co. v. Cole, 532 S.W.2d 246, 253 (Tenn. 1975); State v. Thomas Dillon, No. 03C01-9304-CR-00124, 1994 WL 615748 (Tenn. Crim. App., at Knoxville, Nov. 7, 1994); see also Tenn. R. App. P. 39.

The appellant argues that this Court's dismissal of his appeal was incorrect because this Court granted a Motion to Accept Late Filed Notice of Appeal on July 15, 2005. We have reviewed our opinion and the record. Apparently missing from the Court's file in this case when it was originally given to the panel was indeed an order from this Court granting the appellant's request to file a late notice of appeal. Therefore, we will grant the appellant's petition to rehear and will address the appellant's issues on the merits.